



WISCONSIN REGULATORY DIGEST

A Publication of the
DEPARTMENT OF REGULATION AND LICENSING
FOR CHARITABLE ORGANIZATIONS, PROFESSIONAL FUND-RAISERS
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Standardized Registration For Nonprofit Organizations

The National Association of Attorneys General (NAAG) and the National Association of State Charities Officials (NASCO) has had an ongoing project to develop a standardized registration form which will be acceptable to all of the states that regulate charitable solicitations. It took a while; however, Wisconsin is now in the fold. We will accept the Unified Registration Statement. We would like to compliment, Karin Goldman, Assistant Attorney General of the State of New York, for her persistent efforts to amend documents and eventually obtain our approval.

The availability of this form makes little difference to charitable organizations that limit their activities to Wisconsin; however, it makes

a world of difference to charitable organizations that have to register in most of the states in the Union. They no longer have to fill out a separate registration form for every state. For more information, please check the following website: <http://nonprofits.org/library/gov/urs>.

Charitable Lobbying Guide

If you would like to better understand the issues relating to lobbying by a charitable organization, you may want to check out a lobbying guide that is available on the Internet. The guide, entitled "The Nonprofit Lobbying Guide" is available free at <http://www.indepsec.org/clpi>.

This guide is a project of Independent Sector in Washington, D.C.. The guide is written by Bob Smucker. It offers advice on how to lobby. It also discusses voter education activities by charitable organizations. A printed version is available for a fee.

CHARITABLE ORGANIZATIONS, PROFESSIONAL FUND-RAISERS AND FUND-RAISING COUNSEL

Case Screeners and Advisors:

Thomas L. Heine (Madison)
Howard M. Schwartz (Brookfield)

Administrative Staff:

Cletus J. Hansen, Division Administrator

Executive Staff:

Marlene A. Cummings, Secretary
June Suhling, Deputy Secretary
Myra Shelton, Executive Assistant

Reminders

The Uniform Registration Statement, described above, is for **initial** registration only, not for the annual renewal of an organization's registration.

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The renewal form is simply a 3½- by 8½-inch piece of paper.

Some organizations use the federal Form 990, rather than the Department's Form 308, to file their annual financial report with the Department. If you file the Form 990, you must also include the Department's one-page supplemental form, Form 1952. Please do not write across the top of the supplemental form, "Refer to Form 990 for figures." Please fill in the figures, as required by the form.

If your organization changes its name, you must send to the Department a copy of the amendment to your organization's Articles of Incorporation within 30 days after the name change.

A registered charitable organization that obtains \$5,000 or more of solicited income from Wisconsin contributors in a fiscal year must file a financial report. Otherwise, it must file an affidavit which, basically, says, that it did not obtain \$5,000 in contributions and it wishes to claim an exemption from the financial report.

The renewal deadline for charitable organization registrations was July 31, 1999. Generally, an organization may send in a late renewal application and fee; however, the organization should not be soliciting contributions in Wisconsin until it has renewed. Financial reports or affidavits in lieu of financial reports are due in the Department no later than 6 months following the end of an organization's fiscal year.

If an organization has not filed a complete financial report by the renewal deadline following the report due date, the Department may not renew the organization's registration.

Annual financial reports are open records. They may be viewed by the public and copied. In fact, making your financial reports available to the public is one of the primary purposes of the charitable organization registration law. We are pleased when reporters and other people come into our office to review reports. You may not be quite as pleased, because one never knows

what kinds of problems can surface. However, if you are providing good stewardship of the contributions you obtain, you should have little to worry about. Just remember that what you put on the pages of your financial report can be put in front of you several years later and you may be asked to explain any inconsistencies with other information. We depend on the truthfulness and accuracy of what you report to us and the scrutiny of others.

Chapter RL 5

CHARITABLE SOLICITATIONS

RL 5.01 Authority. This chapter is adopted pursuant to ss. 227.11 (2), 440.42 (3) (am), 440.42 (8), and 440.455 (4), Stats., and s. 440.03 (13), Stats., as created by 1997 Wisconsin Act 27.

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94; am., Register, May, 1999, No. 521, eff. 6-1-99.

RL 5.02 Definitions. In this chapter:

(1) "Central organization" means a charitable organization that has one or more affiliated subunits under its general supervision and control, such as a chapter, local, post or unit.

(2) "Charitable organization" has the meaning given in s. 440.41 (1), Stats.

Note: A private foundation which solicits contributions in this state or has contributions solicited in this state on its behalf falls under this definition.

Note: An organization which is exempt from registration requirements under s. 440.42 (5), Stats., is exempt from the reporting requirement of this chapter.

(2m) "Community" means the county in which a charitable organization's principal office is located.

(3) "Group return" means a financial report submitted by a central organization.

(4) "Operates" means engages in solicitation, as defined in s. 440.41 (9), Stats.

(5) "Principal office" means the address most recently provided to the department by a charitable organization on an application for registration or a written notice of a change of the charitable organization's address.

(6) "Private foundation" means an organization defined in section 509 of the internal revenue code.

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94; renum. and am. (1) (intro.) to be (2), r. (1) (a) and (b), cr. (1), renum. (2) to be (2m) and am. (3), Register, May, 1999, No. 521, eff. 6-1-99.

RL 5.03 Applications for exemption. The department shall grant an exemption from the reporting requirement in s. 440.42 (3) (a), Stats., and the disclosure requirements in s. 440.455 (1) and (2), Stats., to a registered charitable organization that operates solely within one community and that receives less than \$50,000 in contributions during its most recently completed fiscal year, provided that the charitable organization satisfies the following conditions:

(1) **EXEMPTION FROM ANNUAL REPORT.**

A registered charitable organization which, pursuant to s. 440.42 (3) (am), Stats., applies for an exemption from the reporting requirement under s. 440.42 (3) (a), Stats., shall file an affidavit, as provided in s. RL 5.04, within 6

months after the end of the charitable organization's fiscal year.

(2) EXEMPTION FROM DISCLOSURE REQUIREMENTS. A registered charitable organization which desires to be exempted from the solicitation disclosure requirements of s. 440.455 (1) and (2), Stats., may apply for the exemption by filing the affidavit prescribed by s. RL 5.04. A registered charitable organization which has applied for the exemption may not conduct solicitations without making the disclosures required under s. 440.455 (1) and (2), Stats., until the registered charitable organization has received written notice from the department that the department has granted the exemption. A registered charitable organization may qualify for the exemption from solicitation disclosures regardless of whether it uses a professional fund-raiser or an unpaid solicitor for the solicitation of contributions to the registered charitable organization.

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94.

RL 5.04 Affidavits relating to exemptions. Registered charitable organizations which file an affidavit pursuant to s. 440.42 (3) (c), Stats., or s. RL 5.03 (1) and (2) shall provide the affidavit on a form prescribed by the department. The form shall require at least the following information:

- (1) The name, address and telephone number of the organization.
- (2) The registration number assigned to the organization by the department.
- (3) The beginning and ending date of the organization's fiscal year to which the exemption applies or on which the application for exemption is based.
- (4) The name, address and telephone number of any professional fund-raiser or fund-raising counsel which solicited contributions on behalf of the charitable organization or with whom the charitable organization contracted for services during the most recently-completed fiscal year.
- (5) A statement that the organization qualifies for an exemption and the reason why the organization believes it qualifies for the exemption.
- (6) The signature of 2 authorized officers, including the chief fiscal officer, of the charitable organization. The officers shall swear that the information in the affidavit is true.

Note: A copy of the affidavit form may be obtained from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94.

RL 5.05 Exemption of professional fund-raiser from solicitation disclosure requirements. If a registered charitable organization obtains an exemption from the solicitation disclosure requirements in s. 440.455 (1) and (2), Stats., a professional fund-raiser or an unpaid solicitor who solicits contributions on behalf of the registered charitable organization is also exempt from the solicitation disclosure requirements in s. 440.455 (1) and (2), Stats., when soliciting contributions on behalf of the registered charitable organization; however, a professional fund-raiser may not, under any

circumstances, be exempted from the solicitation requirements in s. 440.455 (3), Stats.

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94.

RL 5.06 Procedures for registering a charitable organization.

(1) APPLICATION FOR REGISTRATION. An applicant for registration as a charitable organization shall submit to the department an application on a form prepared by the department, a registration statement that complies with s. 440.42 (2), Stats., and the fee specified in s. 440.42 (1) (b) 3., Stats. Pursuant to s. 440.42. (2) (m), Stats., the department may require information about a professional fund-raiser or fund-raising counsel whose services the charitable organization uses and information about whether any officers, directors, trustees or executive officers of the charitable organization have been convicted of a felony or a misdemeanor. Subject to ss. 111.321, 111.322 and 111.335, Stats., the department may deny or limit the registration of a charitable organization which has an officer, director, trustee or executive officer who has been convicted of a felony or a misdemeanor.

(2) REGISTRATION OF A CENTRAL ORGANIZATION. A central organization may file a single application for registration of the central organization and all of its affiliated subunits, provided that the central organization has complete and direct control over the solicitation activities of all subunits, receives all contributions for its use or future distribution to the subunits and is accountable for all receipts and disbursements relating to the solicited contributions.

Note: A copy of the application form may be obtained from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94; **am., Register, May, 1999, No. 521, eff. 6-1-99.**

RL 5.07 Procedures for registering as a professional fund-raiser or fund-raising counsel.

(1) APPLICATION FOR REGISTRATION. An applicant for registration as a professional fund-raiser or fund-raising counsel shall file an application on a form prepared by the department and fee pursuant to s. 440.43 or 440.44, Stats., as applicable.

(2) BOND. An applicant for registration as a professional fund-raiser or a fund-raising counsel shall file a bond pursuant to s. 440.43 or 440.44, Stats., as applicable, on a form provided by the department or on a form acceptable to the department.

Note: A copy of the application form and 3 bond forms, each of which provides for a different level of coverage, may be obtained from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94.

RL 5.075 Criteria relating to registration as a professional fund-raiser or a fund-raising counsel.

(1) In determining whether a person is required to register as a fund-raising counsel under s. 440.43, Stats., or a professional fund-raiser under s. 440.44, Stats., the department evaluates the obligations of the person to determine whether the person's responsibilities are limited to preparing and sending mailings for a registered

charitable organization as distinguished from the function of making a mailing under the person's own name.

(2) For the limited purpose of determining whether a person is required to register as a professional fund-raiser under s. 440.44, Stats., a person does not "solicit" in this state or employ, engage or provide, directly or indirectly, another person to "solicit in this state" as those terms are used in s. 440.41 (7), Stats., if all of the following apply:

(a) The person mails requests for contributions.

(b) The contents of the mailing identify a charitable organization as the person requesting the contributions.

(c) The contents of the mailing do not include the name of the professional fund-raiser or the fund-raising counsel.

History: Cr., Register, May, 1999, No. 521, eff. 6-1-99.

RL 5.08 Annual financial reports. (1) REGISTERED CHARITABLE ORGANIZATIONS. Only charitable organizations which are registered or are required to be registered with the department are required to file an annual report or an affidavit in lieu of an annual report with the department.

(2) CONTENTS OF ANNUAL REPORTS. The annual report form prepared by the department shall request the financial information required in s. 440.42 (3) (a) 1., 2. and 3., Stats., and shall include questions which bring current the information which a charitable organization provided to the department in an earlier registration pursuant to s. 440.42 (2) (a), Stats. The annual report form prepared by the department will require no other financial information.

(3) STANDARDS FOR COMPLETION OF ANNUAL REPORTS. An annual financial report submitted to the department pursuant to s. 440.42 (3), Stats., by a charitable organization which is registered or required to be registered shall be complete, accurate and truthful. It shall include all schedules and attachments required by the form prepared by the department pursuant to s. 440.42 (3) (a), Stats., or prepared by another person pursuant to s. 440.42 (4), Stats. A charitable organization which files with the department financial information which it has filed with another state or the federal government shall complete a supplemental form prepared by the department which requires additional information to comply with sub. (2).

Note: The annual report form and the supplemental form may be obtained upon request from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(3m) EXCEPTION FOR CONTRIBUTION LIMIT REQUIRING AN AUDIT WITH OPINION. The \$100,000 contribution limit in s. 440.42 (3) (b), Stats., is raised to \$175,000 if a charitable organization has received during its most recently completed fiscal year one or more contributions from one contributor totaling \$75,000 or more.

(4) GROUP FILING OF ANNUAL REPORT. Pursuant to s. 440.42 (4), Stats., the department may accept information properly filed with the federal government as a group return by a charitable organization which is registered or required to be registered, provided that the group return complies with subs. (2) and (3).

History: Cr. Register, December, 1993, No. 456, eff. 1-1-94; cr. (3m), Register, May, 1999, No. 521, eff. 6-1-99.

Solicitations on the Internet

By Legal Counsel, William A. Black

As the next decade unfolds, society will witness and participate in a vast reordering of the way in which economic, educational, recreational and social interaction is conducted. The Internet is currently the biggest growth industry in the economy. The Internet will provide citizens of Wisconsin access to essentially the entire sum of this society's knowledge and economic base.

In regulating charitable organizations, professional fund-raisers and fund-raising counsel, the Department's fundamental mission of public protection will still apply. The Internet will allow charitable organizations vast new access to donors, with greater ability to market the organization's vision and goals. The Internet will also open vast new possibilities for abuse through misrepresentation and fraud.

Care must be taken to prevent abuse from threatening the potential growth possibilities of the Internet. The challenge for regulators and a self policing community of fund-raisers will be to protect the public from the unscrupulous who may attempt to use the anonymity of the Internet to prey on public trust and shield themselves from liability.

The goal of every legitimate charitable organization that uses the Internet to solicit should first and foremost be compliance with the Wisconsin charitable solicitations law. Compliance will allow potential donors to obtain information about the fund raising activity of the charitable organization and to verify it as legitimate. Compliance is good business practice for the charitable organization.

If a charitable organization is undertaking certain acts which constitute "doing business" via the Internet in this state, courts currently allow personal jurisdiction to place a lawsuit in Wisconsin. This results even where the charitable organization is located outside Wisconsin. Therefore, if a charitable organization is engaged in regulated activity, it will be subject to Wisconsin regulation.

The Department's policy regarding Internet regulation is consistent with its mission of public protection. The focus is always on the ACT that the ACTOR PERFORMS that creates a RESULTING HARM OR BENEFIT IN WISCONSIN. If the act is a regulated act under Wisconsin law and is legally sufficient such that it is reasonable for the actor to anticipate being hauled into court in Wisconsin, then personal jurisdiction will exist.

Case law in this area is still developing. No Wisconsin court has yet considered Internet jurisdiction, though several Federal courts have. Charitable organizations, professional fundraisers and fund-raising counsel should consider which of the three types of Internet activities they utilize:

TYPE 1: For a charitable organization actively transacting business over the Internet personal jurisdiction is warranted and any such entity will be subject to regulation in Wisconsin. "Business" for a person or entity falling under the charitable solicitations law would include soliciting, and/or receiving money, whereby the donor would respond to the web site, sending personal information regarding the donor, perhaps along with a donation. Aside from active solicitation and receiving donations, "business" would include making product sales over the Internet.

TYPE 2: In the second category are those entities where there is no personal jurisdiction because they have simply posted information on a "passive" website, making that information available to Internet users. The entity has posted information on the Internet, but has no further communication with potential donors via the Internet. Many jurisdictions currently hold that a passive Internet website alone would not be sufficient to create personal jurisdiction in a state where it is viewed. In instances of the passive website something more must be done by the entity to direct substantial activity into the state. It has been suggested by one court that with such a passive Internet website, even

posting a telephone number will not transform the site into a Type 1 scenario.

Under the alternative "Internet as broadcast" theory, one court has held a passive Internet website could be sufficient to create personal jurisdiction in another state because the Internet site is considered "broadcasting" of an advertisement. The addition of a telephone number on such a site to invite a response is additional evidence of direct sales efforts into the forum. Thus, there appear to be two different approaches to the Type 2 scenario. Wisconsin law is unsettled regarding how to consider the Type 2 scenario.

TYPE 3: The third category is the "middle ground" scenario involving interactive websites, where a donor can exchange information with the host computer. In this instance "something more" will be needed for jurisdiction. Any additional acts in the forum will bolster a finding of personal jurisdiction. Through the act of setting up an interactive website directed at the entire country, and undertaking additional sales or marketing activities in Wisconsin, the charitable organization may be subject to regulation. Some act must exist to encourage further contacts with the donor in Wisconsin.

Where Internet interaction exists, it is more likely that jurisdiction in the Wisconsin forum will exist. The charitable organization, professional fund raiser, or fund raising counsel will thus be subject to Wisconsin regulation.

Example: A clearinghouse web page linking other sites could be regulated under solicitation laws if it links to end-user web pages of charitable organizations which will interactively attempt to do business with the donors. The pass-through clearinghouse web page, although technically "passive", receives a percentage or fee for all "hits" passed through. This amounts to solicitation by the clearinghouse and the charitable organization subjecting them to Wisconsin regulation. Various states are

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beginning to redraft statutes and rules to explicitly refer to similar types of conduct undertaken over the Internet by regulated professions.

An indirect enforcement method to insure public trust and confidence is for state jurisdictions to work together when problems or violations are reported. Through additional cooperation of this type, a problem reported in Wisconsin can be opened as a case file in the home state of the violating entity. Additional cooperation is still needed for uniform application of regulatory law, as what may be deemed a violation in Wisconsin may not be so deemed in a sister state.

Implementing any regulatory scheme is intended to protect the public. Therefore, where no problems currently exist, resources spent enforcing compliance may be better spent elsewhere. This belief is often given as the primary rationale for a lack of Internet regulation. However, the day will come where a highly publicized case arises from fraud over the Internet. The public may rightly ask why the regulators allowed such a thing to happen.

It is advised that all entities or persons doing Internet charitable solicitation in Wisconsin comply with Wisconsin's charitable solicitations law where applicable. Such compliance will provide confidence to potential donors that the organization cares about its mission, and its donors, and is acting as a responsible public citizen.

Telephone Directory

The telephone number for staff is:

(608) 266-5511

After dialing this number you may listen to a menu or you may immediately press one of the following extension numbers:

Application Forms	Press 11
Complaints Against Licensees	Press 12
Whether A Person Is Licensed	Press 442
Application Processing & Requirements	Press 441
Financial Reports	Press 441 or 442
Fax Number	
(608) 267-3816	

Visit the Department's Web Site

<http://badger.state.wi.us/agencies/drl/>

Digest on Web Site:

Look for digest on the Web. Send comments to dorl@drl.state.wi.us

Wisconsin Statutes and Code

Copies of the Statutes and Administrative Code relating to charitable organizations and fund-raising can be ordered from the Department. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated July 1999.

Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes is not automatically provided. **WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.**